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## Ethics and Sovereignty

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## **Ethics and Sovereignty**

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In the political arena, every nation is considered to be sovereign. That is, what happens within the legitimate borders of a nation, what does not affect other nations, is to be decided by the people of that nation or the government of that nation and no one else. If a nation wants to centralize economic decisions, that is its business. If a nation wants a free market economy, no other nation can interfere. If a nation wants to be represented by a new form of government, it has the right to change governments. And so on.

Outside of the political arena, however, in the arena of ethics, can we say that the ethics of each nation is sovereign in the same way that its political arrangements are sovereign? Are the moral rules of each nation to be decided by the people of that nation and no one else? Is it wrong for any other nation to intervene in the ethical life of a nation that has selected its own set of ethical rules? Or, does ethics go beyond political boundaries? If it is right for some, is it not right for everyone? Aren't there some kinds of behavior that we can condemn from an ethical point of view, even if they have been selected by the people of some other nation?

All of these questions are being raised as the morality of nations becomes widely known and the ethical behavior of a nation can be known around the world instantaneously. The more we know about the ethics of nations, the more frequently such questions are likely to arise, leaving us with the question of how we are to understand ethics and the sovereignty of nations. In the following, we try to make a contribution to that understanding.

### **I**

There are two familiar ways to see the relationship between ethics and sovereignty. The first is to say that ethics, like politics, is a matter for each nation to decide for itself and it is not the business of any other nation to interfere with that decision. The second is to say that ethics reaches beyond sovereignty, that some things are right or wrong, independently of what the people of any nation claim. We will consider each of these views in turn.

If we accept the view that the ethics of any nation is sovereign, in the way that its politics and laws are sovereign, we encounter all of the problems associated with what is frequently called "cultural relativism." The basic problem of cultural relativism is that it prevents us from saying of any other culture that what they do is wrong, as long as

what they do conforms to the ethical standards adopted by that culture. If, for example, the people of one culture (or nation) decide to practice apartheid, then no other culture can say that what they are doing is wrong, as long as what they are doing is conforming to the standard of apartheid.

Outsiders could say that what the people of another culture are doing is wrong, but they could only say this of actions that violated the ethical standard of that society. For example, we could say of any culture that had adopted apartheid that its people were acting wrongly or that one of its policies was wrong, if we are referring to actions or policies that are contrary to apartheid. Outsiders could also say that what the people of a culture are doing is wrong, but they could only mean by this that what those people are doing is not what we consider to be right, and nothing more. What we cannot say if cultural relativism is correct (or if the ethics of nations are sovereign) is that what people do in other cultures that conforms to their own moral standards is "really" wrong.

But, it is just this problem that causes us to abandon the perspective of cultural relativism. We do believe that some actions are wrong, even if they have been adopted by the people of another culture (or even some people in our own culture). We believe, for example, that apartheid is wrong, really wrong, even if some culture adopts apartheid as a policy for treating some of its people differently from others. We believe that ethnic cleansing is wrong, even if it is a practice adopted by other cultures. We believe that executing suspected dissidents without a trial, a fair trial (i.e., without really knowing whether the suspects have behaved as they have been charged) is wrong, even if this is a common practice in other cultures.

And we do not just think that such behaviors are morally wrong, for we expect others to agree that such behaviors are morally wrong—although we might not expect the agreement of those who participate in such behaviors. The wrongness of such behaviors does not lie in the fact that the behaviors are different from our own culture's behaviors, but that they are universally wrong. They would be wrong in our own culture if we adopted those behaviors. We think such behaviors are really wrong, and not just wrong as a matter of taste or culture.

As long as we view some behaviors as wrong across cultures, then we must reject cultural relativism and with it the view that the ethics of nations are sovereign in the same way that the internal politics of nations are sovereign.

## II

The second familiar way of viewing ethics and sovereignty is to see the ethics of our own culture as correct, or more enlightened, or more civilized, than the ethics of other cultures (at least some other cultures) and, therefore, as applying to other cultures, whether or not they accept or recognize that application. Some cultures are morally superior to others, and those cultures of moral superiority have the right, indeed the obligation, to instruct other cultures in their morality or even to bring about changes in the ethics of other cultures—possibly even by some form of coercion.

But this view of ethics and sovereignty runs into its own set of problems. These problems we would identify as the problems of colonialism. That is, one culture or nation treats the people of other cultures badly (from the moral point of view) by forcing them to conform to particular standards, all in the name of treating them well, i.e., improving their morality. Even condemning another culture, because it does not conform to all of our own standards, is a way of treating another culture in a morally inappropriate way.

Theoretically, we are willing to say that the view of ethics and sovereignty that includes cultural relativism is wrong. This means that there are some things that are really right or wrong, regardless of how another culture perceives them. The problem with what we are calling the colonial perspective is not a theoretical problem, but rather a practical problem. It is the problem of seeing what we do as right simply because we do it or we are familiar with it. This tendency is a common one and if we are to talk meaningfully about ethics across boundaries, we will have to make an effort to curb this tendency.

Since neither of the familiar views seems to us a satisfactory way to understand ethics and sovereignty, we make the following proposal. The ethics of nations are not sovereign—to avoid the problems of cultural relativism—but the ethics of any given nation are not necessarily ethics that apply to everyone—the problem of believing that my values are correct because they are mine. What is required is a case by case examination of the various values or practices of any nation to see if they meet some sense of morality to which people from different cultures can agree. Is the example before us more like a case where there is wide agreement that such behavior is wrong? Or, is it closer to one in which one culture tries to impose its views on another.

If this theoretical understanding, call it the case study method if you will, is to be satisfactory, then it will have to work in practice. We would now like to apply this method to several examples.

## III

### Legal Punishment

The first set of case studies concerns various forms of legal punishment. On the one hand, there seems to be a clear acknowledgment in the United States and elsewhere that imprisonment or incapacitation is a morally acceptable form of punishment, particularly when certain conditions are be-

lieved to have been satisfied. Assuming that the original conviction was a just one, these conditions may include a prohibition on the severity of the imprisonment unduly exceeding the moral gravity of the offense (i.e., an acknowledgment of a rule of proportionality) and the requirement that the conditions of imprisonment should include adequate health care and protection from others who are confined in the same facility (i.e., an acknowledgment that those in the custody of the state should be treated in a humane way).

On the other hand, there seems to be wide agreement, albeit far less than the agreement on imprisonment, that the death penalty is morally wrong. Some may argue that the death penalty constitutes a denial of the offender's dignity as a human being, while others object to it on the grounds that it is an act of revenge. Still others may view the death penalty as immoral not because the act of putting someone to death is in principle morally repugnant, but because the punishment may not satisfy the "demands of justice" which requires punishing only the guilty. In the worst case scenario, capital punishment may be used to intimidate or terrorize some segment of a society. The trial and execution of the Nigerian playwright and human-rights activist Ken Saro-Wiwa in 1995 is a case in point. But the "demands of justice" may also not be served by the legal system found in the United States. How could this be? First, it is not true that every person who kills another human being is guilty of perpetrating a crime. It is quite common for people to die as a result of an accident or an act of justifiable or excusable homicide. But even if it is clear that several persons have committed crimes by killing another human being, it should not be taken for granted that they are guilty of committing the same crime. Each person may be found guilty of having committed one of several crimes: first-degree murder, second-degree murder, or manslaughter. In the case of a post-*Furman* capital murder trial, if the jury decided against the defendant on the issue of guilt or innocence by handing down the verdict of guilty of capital murder, then the jury would have to decide on the issue of death or life imprisonment.<sup>1</sup> In the penalty stage of the trial procedure, the jury would be required to consider all aggravating and mitigating circumstances in deciding whether the death penalty is the proper punishment for the convicted defendant. Possible aggravating circumstances include the capital felony being committed for pecuniary gain or that it was especially heinous, atrocious, or cruel; possible mitigating circumstances include the defendant having no significant history of prior criminal activity or that the defendant was under duress at the time of the crime.<sup>2</sup>

Given the series of discretionary stages of the American criminal justice process, it is apparent that judgments concerning someone's guilt and desert can be affected by a number of irrelevant factors including ethnic and racial attitudes. Indeed, some statistical studies have shown that blacks killing whites have the greatest chance of being given the death penalty, while whites killing blacks have the least chance of being executed. This is suggested by the disproportionate percentage of blacks who are under sentence of

death.<sup>3</sup> Apparently there is a sufficient number of discretionary decisionmakers who believe that the seriousness of one crime far outweighs that of another and so deserves a more severe punishment. So even after the post-*Furman* reforms were implemented, we have some reason not to be overly confident that the American criminal justice system can sort out those who deserve to be executed from those who do not in a way that is both rational and just. If our confidence has been compromised in any way, then perhaps we ought to reject the death penalty as a legal form of punishment in the United States.

But what about caning as a legal form of punishment for an offence such as vandalism? Is caning a case where there is wide agreement that such punishment is morally wrong (similar to the case of capital punishment) or does the uproar against it make it closer to one in which one culture tries to impose its views on another? Caning appears to be closer to the latter. Take the recent case of Michael Fay. Michael Fay was an American teenager living in Singapore. In 1994 Fay was arrested and found guilty of several acts of vandalism, including a week long spree of spray-painting graffiti on cars. His punishment included a fine, a jail sentence, and being given four strokes with a rattan cane.<sup>4</sup> The sentence brought world-wide condemnation of Singapore's treatment of Fay. The issue was not whether Singapore had stringent criminal sanctions for relatively minor acts, but rather the severity of the punishment for vandalism. One objection to the punishment was that it did not fit the crime—a violation of the rule of proportionality. Those who voiced this objection thought that the degree of punishment should correspond to the degree of harm or damage that was done by committing the illegal act, and that acts of vandalism did not warrant a "physical beating." In defense of the sentence, government leaders of Singapore explained that the legal system of their country owes more to those who abide by the laws (and so must provide them with ample protection) than it does to those people who break the laws, whether or not they are citizens of Singapore. In other words, the heart of the matter for Singapore's leaders was the maintenance of social order. The assumption was that such harsh penalties would serve as a deterrent to those who might consider perpetrating such crimes in the future. And in so doing, the leadership of Singapore satisfied its obligation not to act in ways rendering it unlikely that future generations in Singapore can have an equally high standard of living.

Critics of Singapore's treatment of Fay, especially those from the United States, cited their own society as a standard by which all others should be measured. For example, it was said that those who live in the United States live in a country that takes seriously a broad notion of freedom and individual rights, which in some way tempers punishments that would otherwise be considered cruel and unusual. For example, rather than caning the individual, police and prosecutors in the United States often dispose of such offenses with a warning, probation, or restitution. The government of Singapore, however, has given more importance to the notion of "collective security" than to individual freedoms

and rights. But the result is not all bad. In some ways life in Singapore is more pleasant than life in some metropolitan areas of the United States. The streets are clean and pedestrians are relatively safe and secure from violent assault. Not many Americans who live in urban centers such as New York City, Chicago, and Los Angeles can say the same about their streets and personal safety. Nevertheless, many Americans would say that the cost of such security is too great; on the one hand, quick and severe punishment for those persons who seek to breach the security of those around them and, on the other hand, a far more restricted view of freedom and rights.<sup>5</sup>

But who is to say which approach carries with it a greater degree of moral legitimacy? Is a nation whose government exhibits a degree of authoritarianism in order to protect those who live within its territorial boundaries, though at a cost of certain freedoms and rights, morally superior to a nation whose government allows for a wider and deeper dispersal of freedoms and a more stringent protection of individual rights, though at the cost of allowing for what seems to be a certain degree of "anarchy"? In the absence of caning being an egregious violation of human rights, which would be the impetus for widespread moral rejection of this form of punishment, the case of caning seems to be one of ethics as sovereign. It is precisely because caning is used to inhibit the erosion of the social fabric, which is essential for democracy and the development of human potential, that the choice of how people will determine the shape of their associations should be left up to them. If freedom means living life to the fullest such that a citizen has the ability to satisfy his or her material and intellectual needs and desires—in other words, to develop his or her potential, then perhaps freedom should be measured in terms of not only non-interference with a person's rights but also in terms of a person's security. Is a woman who has her property vandalized, free? Is a man in constant fear of having his possessions destroyed free to develop himself to the fullest of his potential? If government does not provide the conditions to allow citizens to act according to their rights, then citizens will not be able to pursue their own values and ends, to pursue their own vision of the good life. And if the development of one's potential is determined in part by the socio-political-economic conditions that the individual finds himself or herself in, then perhaps the citizens ought to decide for themselves whether caning is a morally permissible form of punishment.

## Bodily Mutilation

The second set of cases concerns bodily mutilation. Taking the clearly acceptable case first, it seems that facial mutilation (e.g., facial scarring and piercing) is a case in point. Although some people may not be inclined to perform gross mutilation on his or her own face or on the face of a family member, facial mutilation does not seem to be morally objectionable if it is undertaken voluntarily. This is true in many societies; people are *generally* allowed (or free) to treat their bodies as they please. Indeed, the facial scar-



ring that is commonly found in some Third World countries is in some ways quite similar to the morally acceptable procedure of cosmetic surgery (whether it involves a "nose job" for a middle-aged woman or the removal of a tail from a newborn) that is routinely done in the developed world.<sup>6</sup> And, of course, there are those less radical practices that are found morally permissible throughout the world, practices like piercing an ear or nose with metal objects.

On the other hand, the ancient practice of female circumcision, often referred to as female genital mutilation (FGM), is widely acknowledged as being morally wrong, particularly when it is done involuntarily and when it severely compromises a woman's general health, capacity for reproduction, or sexual pleasure.<sup>7</sup> Although this practice has persisted for a variety of reasons, the involuntary and compromising features seem to be at work in three of the four basic forms of female circumcision: "sunna," excision, and the most radical form of the practice, infibulation, or "Pharonic" circumcision. Sunna circumcision involves the removal of the prepuce or clitoral hood while allowing the gland and body of the clitoris to remain intact. Excision, sometimes called "clitoridectomy," is the most common form of circumcision and often involves the removal of the entire clitoris. Although the extent to which these forms of circumcision reduce the sexual pleasure of the woman is unclear, the immediate effects of these procedures to a woman's health are quite apparent.<sup>8</sup> They often include shock, hemorrhaging, and serious bacterial infections. In addition, there are often long-term gynecological and genitourinary complications resulting from these procedures, including infertility and difficulty in childbirth.<sup>9</sup> But of the three forms of circumcision noted above, it is the radical procedure of infibulation that has the most deleterious effects on a woman's health, childbearing, and sexuality. This is because infibulation involves the removal of almost all of the external female genitalia and what remains is sewn together leaving a small hole for the passage of urine and menstrual blood. Of course, the adverse effects can be severe with any of these forms, but the problems are most pronounced with infibulation, problems which range from hemorrhage and acute infection to chronic infection and difficulties in childbirth.<sup>10</sup>

The growing acknowledgment that female genital mutilation is morally reprehensible is reflected in a number of international legal documents that have been adopted by the United Nations General Assembly. One such document is the Universal Declaration of Human Rights that was adopted in 1948. It spells out the fundamental human rights that member states have pledged to protect as well as promote. Among the articles that pertain to female circumcision are: Article 3, "Everyone has the right to life, liberty and the security of person"; and Article 5, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."<sup>11</sup> Another powerful document is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was adopted by the General Assembly in 1981. The CEDAW is a convention

that was specifically drafted to acknowledge that women have an equal right to the full enjoyment of human rights and fundamental freedoms as do men. Although the convention does not mention genital mutilation by name, it is a revolutionary document insofar as it acknowledges a linkage between custom and the restriction of women's enjoyment of their human rights, a linkage that encompasses female genital mutilation. Under the convention's Article 5, for example, governments are obliged to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on the stereotyped roles for men and women."<sup>12</sup> But it was not until the United Nations World Conference on Human Rights held in Vienna in June 1993 that the member states took seriously the global dimensions of female-targeted violence. In the Vienna Declaration and Programme of Action, member states declared that they should work towards "the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism."<sup>13</sup> But by far the most important resolution adopted by the General Assembly was the 1993 Declaration on the Elimination of Violence Against Women, Article 2 of which defined violence against women as including "physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, *female genital mutilation* [our italics] and other traditional practices harmful to women, non-spousal violence and violence related to exploitation."<sup>14</sup>

But what about genital mutilation that has little health risk and that does not harm a woman's capacity for reproduction or sexual pleasure? The least intrusive form of female circumcision called ritualistic circumcision, a procedure that involves the clitoris merely being "nicked" by a sharp instrument, is such a practice. Although it is a surgical procedure, it is no more intrusive, painful, and sexually debilitating than male circumcision, a surgical procedure that involves the removal of the foreskin of the penis and which, like the female procedure, can be followed by the onset of infection. The similarities between male circumcision and ritualistic circumcision become clearer once we realize that (1) male and female circumcision are partly rooted in religious ritual, the former representing a covenant between God and His people in Judaism, whereas the latter is associated with the important virtue of chastity within the Muslim religion; and (2) that male and female circumcision often occurs to infants and young children, persons who are unable to give their consent to the procedure.<sup>15</sup> If the analogy between the two types of circumcision is morally relevant, then perhaps there is a dilemma of moral con-

sistency that critics must acknowledge: either the moral outrage that many show towards female circumcision should be directed solely at the three most intrusive forms of the practice or their moral outrage towards ritualistic circumcision should be extended to male circumcision. For whatever reason, however, the analogy is not given much credence, thereby resulting in the dismissal of the dilemma. Yet the growing condemnation of female circumcision has not been confined to international organizations like the United Nations, for several governments have also prohibited some, if not all, forms of female circumcision within their own territorial boundaries. In 1982, Sweden passed a law making all forms of female circumcision illegal. It is likewise illegal in England and Somalia. And in the United States, Congress appears to be confronting this practice by putting together legislation (HR 3247) that would make it illegal to perform female genital mutilation on a child in the United States as well as informing all new immigrants that the practice of female genital mutilation cannot be brought into this country. Moreover, the highest immigration court in the United States, the Board of Immigration Appeals, recently recognized the practice of female genital mutilation as a form of persecution and ruled that a 19-year-old West African woman be granted political asylum.

But the question remains, at what point should a practice like female circumcision be deemed "dangerous" enough to be an egregious violation of human rights, a violation that requires intervention on the part of international organizations and governments? This issue is especially pertinent given that all forms of circumcision for the two genders have not been shown to be sufficiently dissimilar in the way that they would have to be in order for us to render different moral and legal judgements, thereby eluding charges of selectivity, inconsistency, and even capriciousness. There must be important moral considerations in regard to the practice of female genital mutilation to outweigh the moral reasons for respecting a nation's sovereignty and to single out this mutilation as a practice to be banned worldwide. Even a "condition of reasonableness," such that there is some plausible basis for believing that a prohibition against this practice will promote to some measure the well-being of people worldwide, is not sufficient if the prohibition is self-serving for its sponsors.<sup>16</sup> This would be reflected in a situation in which the countries of the North and West are permitted to continue male circumcision, while those of the South and East are subject to stringent regulations prohibiting the female forms.

### Population Control

The third set of cases concerns population control. On the one hand, population control is clearly acceptable in situations where it is undertaken voluntarily. Ways of limiting the fertility rate include hormonal methods, such as the birth control pill and Norplant®; barrier methods, such as diaphragms, condoms, and spermicides; IUDs; sterilization; abstinence; surgical abortion; and chemical abortion, such as RU 486. Of course, the means by which a woman limits

the number of times she gives birth during her lifetime is subject to vigorous debate. For example, there is a debate among Catholics concerning the Church's prohibition of contraception and abortion as morally illegitimate in their own right, regardless of how voluntarily they may be used by a woman. But, in principle, the idea of women being allowed to make procreative decisions seems to be widely recognized throughout the world. The recent debate concerning reproductive and sexual rights, especially the debate at the United Nations Fourth World Conference on Women held in Beijing in 1995, has brought much attention to this issue. At the core of this debate is the right to determine the size and spacing of one's family, which is bound up with the ideas of bodily integrity and sexual self-determination. Any attempt by a woman to voluntarily delay starting a family or to curb the size of her family seems to be reflective of these fundamental ideas.<sup>17</sup>

On the other hand, population control is clearly wrong when it prohibits competent individuals, i.e., those who have the physical and psychological capacities as well as the financial resources to raise a child, from bearing children in nations in which doing so would not have an adverse effect on the economic development or the socio-political stability of the nation-state. Questions of competency covering such a range of capacities seem to be relevant considerations as regards whether someone ought to be allowed to have children as well as the number of children to be had. Indeed, the quality of life should be more than that experienced by a perfectly miserable person. But to prohibit those women who are adequately endowed in such a setting from bearing children would be to act contrary to not only the Beijing Declaration, but also Article 16 of the Universal Declaration of Human Rights which states that "Men and women of full age . . . have the right to marry and to found a family."<sup>18</sup>

But do we have good reason to say that it is morally wrong for a government of a developing nation to coerce its female citizens to not have more than one child? Or, for that matter, is it morally wrong for such a government to coerce its female citizens to have children? Is there wide agreement that coercion in either situation is morally wrong or are the moral objections just symptomatic of cultural domination? We believe there is a split decision; antinatalist population policies (of, for example, present-day China) may be morally permissible given certain conditions, whereas a strong case can be made that pronatalist policies (of, for example, Romania under Ceaușescu) are morally impermissible.

Take China's current one-child policy, which has been one of the most controversial policies in the world. The Chinese government became increasingly aware of its population problem throughout the 1970s, coming to the realization that even if its fertility rate were to drop to the "replacement level" of about two children per woman, its population would continue to grow for at least 50 years because of "demographic momentum" (that is, each woman is having fewer children, but the number of women who are giv-

ing birth is much greater).<sup>19</sup> It was this realization that led to the current one-child policy. At the core of the policy is a set of benefits or incentives and punishments. For those couples that pledge to have no more than one child (called "one-child certified" families), a wide range of benefits are made available, including allowances for medical care and housing, priority for schooling and employment, and discounts for food. But for those who exceed the allowable number of children, there are a set of severe fines and sanctions. Although the policy is enforced differently in the urban centers than it is in the rural areas, it allows for a variety of punishments ranging from restricting living accommodations to limiting employment opportunities. There are even allegations that the official policy includes coerced abortions and sterilizations.<sup>20</sup> The latter allegations have especially led many individuals as well as governments to morally object to China's population control policies. But whereas those who object to China's policies emphasize the individuality and personal autonomy of human rights, the Chinese leadership has focused on the collective and social unity as the key considerations allowing them to ensure socio-economic development. In this sense no one should be allowed to impose a cost on others simply by having a child, especially when doing so has a negative impact on the distribution of goods and services in a community. Some interference in the personal and private part of peoples' lives may be required if a community is to control its population and to regulate the quality of life of its people.

These two goals are extremely important for China because they are intertwined. Of course, in the broader scope of things, the control of the world's population is an extremely important goal. According to the United Nations Population Division, the world's population is now approximately 5.77 billion and is growing at an annual rate of 1.48%. This means that the world's population will increase by 81 million next year and that the global population will double in 43 years.<sup>21</sup> These startling figures, however, do not necessitate a doomsday scenario for mankind. This is because much can happen in the next four decades, not to mention the fact that the variety of assumptions, choices, and unknown variables that surround the numerous estimates of the human carrying capacity of the planet are not well understood. This is made clear when we realize that these estimates range from 1 billion (a figure that mankind surpassed quite some time ago) to 1 trillion.<sup>22</sup> But given that more than half of these estimates fall within the range of 4 billion and 16 billion, the issue of world population growth should be taken as a serious concern. And it is not just a matter of sheer numbers of people, for as neo-Malthusians and others have indicated, a continued increase in world population is linked to the retardation of development and economic growth, the degradation of the environment, the exacerbation of poverty, and a rise in social breakdown and armed conflict.<sup>23</sup>

Although these linkages may be played out differently from country to country, the linkage of a large population that continues to grow and environmental degradation is

most certainly demonstrated in China.<sup>24</sup> China, the most populated country in the world, has a population of 1.23 billion persons and a population growth rate of 1.4%. China's rapid population growth and the growth and distribution of China's poor have resulted in numerous environmental problems that cover land, air, and water resources. In terms of China's land resources, the increase in population has resulted in a tremendous demand for timber and firewood, thereby further resulting in increasing pressures on its forest resources. These same forest ecosystems are also in danger from land conversion because of the increasing need to turn forests into crop producing acreage. But it is not only the forest ecosystems that are being destroyed or degraded, for China's large population has been a principal cause for grassland degradation as well as the degradation of arable land due to poor land-use policies.

China is also paying a heavy price for having such a large population in terms of air pollution due to the demand for ever increasing amounts of energy. China already is the world's leading producer and consumer of coal. Coal supplies three-quarters of China's energy and is the biggest source of low atmospheric air pollution in cities as well as the principal source of sulfur dioxide that causes acid rain. Some researchers have noted that air pollution has gotten so bad in China that current levels mirror levels of air pollution of the developed countries during the 1950s.<sup>25</sup>

And in terms of its water resources, China is facing serious problems of water pollution caused primarily by the drainage of industrial waste water. The pollutants of this runoff not only affect surface water, but groundwater as well, which has contributed to frequent fresh water shortages in China's urban centers.

It is in part a response to these and other environmental problems that plague China that its leadership has sought to curb the damage that is being done to the environment in the interest of the common good (i.e., the quality of life that is suitable to its people). Consequently, China has sought "public intervention" to control "private action." Of course, population policies which include coercive sterilization and abortion are morally objectionable insofar as they involve "cruel, inhuman, or degrading treatment." But a coercive practice need not be morally improper. It is when a policy is a violation of Article 5 of the UN Universal Declaration of Human Rights that we can persuasively claim that the policy is immoral.<sup>26</sup> But does a coercive policy that uses positive incentives as well as the withholding of privileges be construed as a violation of Article 5? And what about Article 6 which concerns the founding of a family. Are such measures violations of this article? Once again, in the absence of measures that are egregious violations of human rights, the case of population control seems to be one of ethics of sovereignty.

## IV

What are the obvious lessons to be learned from this exercise? First, practices that are widely held to be morally acceptable should be acknowledged as such and even pro-



noted when appropriate. Second, those practices that are widely rejected as morally unacceptable should be eradicated. But are all practices easily pigeonholed as being either morally acceptable or unacceptable? Our study suggests that this is not the case. Indeed, caning, ritualistic circumcision, and China's one-child policy seem to be such practices. But unlike practices that are clearly acceptable or unacceptable, in which case steps to promote or eradicate them can be implemented by governments or international organizations, these practices may pose a dilemma to those who formulate and implement policies that affect how people live their lives. On first glance, some may argue that such practices should be left alone, at least for the present time, because to do otherwise may suggest an attempt on the part of some nations to force other nations to conform to particular ethical standards, thereby rekindling the colonialism of yesteryear. But this leaves us without even the barest of criteria to decide for ourselves the range of morally acceptable measures that our leaders (as well as leaders of regional and international organizations) can take with regards to these "normatively fuzzy" practices. Can this be remedied in some way? We think so, even if only in the most simplest of terms.

So what is the Clinton administration, for example, allowed to do concerning the three cases at hand? What are the options open to the administration? To begin with, perhaps it would be best to consider what kind of practices we are dealing with, for this will in large measure help to determine what should or should not be done. One way to categorize such practices is to place them into one of two categories: state-directed practices and culture-based practices. Those that are state-directed are practices that are the direct result of a government's laws and/or policies. They are practices that would cease to be within a relatively short period of time if the government responsible for them took steps to change the relevant laws and/or policies. Although state sponsored terrorism is an act that is of the "obviously immoral category," measures taken by the government of Iran to curtail terrorism, such as withholding logistical and financial support from the pro-Iranian Hizbullah in Lebanon, would be an example of such a policy change. On the other hand, culture-based practices are not state-directed, though they may be state-sanctioned (i.e., the practices are neither promoted nor discouraged by the government). They are practices that, over time, have become a way of life for certain segments of the population.

Into which of these categories do we place caning, ritualistic circumcision, and China's one-child policy? Caning and China's one-child policy are clear cases of state-directed practices. The former is a punishment that is a part of the criminal code of Singapore, whereas the latter is an official state policy of China. Surely, both of these practices would cease to be if the governments of Singapore and China took steps to rewrite its criminal code or its population policy respectively. On the other hand, ritualistic circumcision seems to be a culture-based practice that is tolerated by many governments around the world.

We can now consider the options open to a disgruntled U.S. administration that feels the need to do something about these sorts of practices. Given that many of these practices are thought to be morally wrong because of their relationship to fundamental human rights, it seems clear that the sort of state intervention that is being alluded to is none other than "humanitarian intervention." Although the classic definition of humanitarian intervention as "forcible self-help by states to protect human rights" is still regarded by many commentators as the preferred usage, there has been a growing effort on the part of others to expand this definition to include forcible self-help by regional and international organizations (and, perhaps, by corporations like Executive Outcomes), the threat or use of non-military coercion (e.g., economic boycotts), as well as non-coercive measures (e.g., secret financial support of friendly politicians).<sup>27</sup> Of these, perhaps it is coercive (military and non-military) humanitarian intervention that is the most controversial, since it is this sort of intervention that is most cited as involving the violation of a nation's sovereignty.<sup>28</sup> Which of the practices cited above would be best dealt with by means of forcible military humanitarian intervention? Since this sort of intervention is the most intrusive and destructive of the forms of intervention, the source of the inhumanity that is at work in a country should be understood as something which is well-defined, singular in nature, and set apart from the victims. A despotic ruler would be a clear-cut example of such a source of inhumanity. Of the three practices that have been examined, only Singapore's punishment by caning and China's one-child policy are obvious cases of state-directed practices that could be brought to an end through overt or covert military operations.<sup>29</sup> But the problem is that national sovereignty and territorial integrity should be respected and that their violation should only occur in the most extreme of circumstances.<sup>30</sup> What sorts of conditions might we want to consider as having to be satisfied before such intervention is thought to be morally justified? The just-warist perspective on the moral justification of going to war—the *jus ad bellum*—provides us with three important conditions: (1) the principle of just cause; (2) the principle of proportionality; and (3) the principle of last resort.<sup>31</sup> Perhaps the only just cause to warrant the use of military force in the protection of human rights would be if there were egregious or gross human rights violations being committed by a government. Although there is no clear agreement with regard to the meaning of the term 'gross human rights violations' as well as the sorts of acts considered to be such violations, the United Nations considers the following to be examples of gross human rights violations: "genocide; slavery and slavery-like practices; summary or arbitrary executions; torture and cruel, inhuman or degrading treatment or punishment; enforced disappearance; arbitrary and prolonged detention; deportation or forcible transfer of population; and systematic discrimination, in particular based on race or gender."<sup>32</sup> Are Singapore and China guilty of such violations when it comes to caning and the one-child policy respectively? Perhaps, but it does not seem



to be obvious to us. A strong argument would have to be presented for this condition to be met. But even if this condition is said to be satisfied, the other two conditions appear to be obstacles for the immediate use of force. The principle of proportionality may not be met because the amount of harm to persons as well as destruction of property (i.e., the amount of evil) for all involved may not outweigh the good that is achieved by the use of military force in protecting human rights. Moreover, the principle of last resort requires that all avenues to rectify the injustice must be exhausted prior to overt or covert military action. It is unlikely that these avenues have been exhausted with regard to either practice. So it appears that the use of forcible military humanitarian intervention does not seem to be justified for use against Singapore and China.

What about coercive non-military humanitarian intervention? Is it morally permissible for the Clinton administration to use such intervention to influence the leadership of Singapore to change its criminal code or to persuade the Chinese government to reformulate its population control policy? In regards to Singapore's criminal code, an effort to induce a revision of the code could be made by linking judicial reform with a continuance of good political, economic, cultural, and scientific ties with the United States. Measures such as cultural and economic boycotts, as well as withholding certain kinds of aid, freezing assets, and imposing various other economic and political sanctions could be considered by the administration. Of course, there is no *prima facie* obligation for the U.S. to provide assistance to Singapore, but for the government of the United States to link its granting of foreign assistance to Singapore on the basis of whether that country shares a particular administration's views on freedom, individual rights, punishment, and social order may be taken as just another instance of coercive interference in the internal affairs of a sovereign nation, an interference that may have little, if anything, to do with self-defense or the prevention of gross violations of human rights, two recognized exceptions to the general prohibition of assaulting a nation's sovereignty.

Many of the same measures could be taken against China and its one-child policy, but one measure that has been used against China and other countries that have adopted "coercive" population control policies is the reduction/elimination of family planning assistance. For example, until the 1980s the United States had a long history of established policies of giving family planning assistance to developing countries.<sup>33</sup> With the first term of the Reagan administration, however, U.S. policy changed dramatically. The Republican administration reversed U.S. policy and decided to eliminate its funding of *international* family planning programs, which included funding that was connected with abortions. The administration first reduced U.S. contributions, then totally eliminated its funds to the International Planned Parenthood Federation (IPPF) and the United Nations Population Fund (UNFPA). Action was taken against the IPPF because it provided funds for abortions, whereas the defunding of the UNFPA took place because it provided

support to China's "coercive" family planning program. Although funding for family planning continued through bilateral programs under the auspices of the United States Agency for International Development (USAID), the contributions were for selected programs and the contributions were at diminished levels.

Although some had hoped that a change in administrations would bring a change in U.S. policy toward family planning assistance, the arrival of the Bush administration only resulted in the continuation of the policies put forth by the Reagan administration. President Bush even went so far as to veto several bills that were proposed by Congress to restore funding for family planning programs. In 1995 the Clinton administration publicly announced its willingness to reassert U.S. leadership in this area by setting aside a record \$547 million for family planning programs, but time will tell whether the effects of the Reagan and Bush policies will be reversed, thereby resulting in renewed efforts to further reduce global population growth.<sup>34</sup> In the meantime, the question should be asked, "Were the politics of the past two Republican administrations a case of conservative American politics and morality dictating how China and other developing countries should go about attempting to control the size of their populations by interfering in individuals' choices about their reproductive behavior?"

But what about the various forms of female genital circumcision? Given that the practice is a culturally-based one, the use of forcible military humanitarian intervention does not seem to be morally justifiable. In this case, the source of the evil is not well-defined, singular in nature, and external to the victims. Rather, it is part of a *long standing* cultural tradition. As for coercive non-military humanitarian intervention, there are measures like economic and cultural boycotts and the withholding of certain kinds of aid. Sanctions like these, however, have limited leverage, since the countries in which the practice of female genital mutilation is most prevalent are countries of the Third World, countries which are in dire need of assistance from countries like the United States and Canada. Sanctions that are thought to end the plight of women may in fact decrease the level of well-being of those already marginalized in the targeted country. Perhaps the best approach to changing the cultural practices of a nation is by educating its citizens to refrain from certain practices. But whatever approach is adopted, targeted groups may still view the "request" for change to fail the test of impartiality, whereby cultures are not treated as having equal worth and value.

In an age of ever increasing contacts among peoples who possess very different views on politics, economics, religion, and morality, there will be a growing desire by leaders of powerful nations to judge either other peoples' beliefs and values according to their own standards, or to make some sort of attempt at being "fair" to all peoples all the time. Yet we have taken issue with the tendency towards moral universalism and centrism as well as the proclivity towards particularisms and polycentrism. Neither approach in and of itself is satisfactory; there is no moral algorithm of

any kind. It is against this backdrop that a different approach unfolds: an approach according to which each practice must be examined in its own right to determine if an ethics of sovereignty or an ethics of superiority can be appropriately applied to it. We hope that our examination of this issue has made it clear how real a problem this is for those who are moving into the next millennium.

## Endnotes

1. The U.S. Supreme Court, in its 1972 landmark decision in *Furman v. Georgia*, held that the procedures used by the State of Georgia to apply its death penalty statute were unconstitutional. It was the *Furman* decision that inspired procedural reform in the area of capital punishment.
2. Stephen Nathanson, "Does It Matter If the Death Penalty Is Arbitrarily Administered?" *Philosophy and Public Affairs* 14 (Spring 1985): 154 and Barry Nakell and Kenneth A. Hardy, *The Arbitrariness of the Death Penalty* (Philadelphia: Temple University Press, 1987), pp. 9, 230-32, 279-80.
3. For discussions of racial discrimination in the imposition of the death penalty, see David C. Baldus, George Woodworth, and Charles A. Pulaski, Jr., *Equal Justice and the Death Penalty: A Legal and Empirical Analysis* (Boston: Northeastern University Press, 1990); William Bowers, ed., *Legal Homicide: Death as Punishment in America, 1864-1982* (Boston: Northeastern University Press, 1984); Nakell and Hardy, *The Arbitrariness of the Death Penalty*; and Stephen Nathanson, "Should We Execute Those Who Deserve to Die?" in *An Eye for an Eye: The Morality of Punishing by Death* (Totowa, N.J.: Rowman & Littlefield, 1987), pp. 42-59.
4. Joseph B. Tamney, *The Struggle Over Singapore's Soul: Western Modernization and Asian Culture* (Berlin: Walter de Gruyter, 1996), pp. 175-77. It is worth noting that the bordering country of Malaysia also has a penal code that includes the punishment of caning. In October 1996, the government of Malaysia proposed new penalties to discourage illegal immigrants from entering the country. Foreigners, primarily Thai, would be deported for a first illegal entry into the country but be subject to caning for additional entries. In addition, employers could face caning for repeatedly hiring illegal immigrants.
5. It is worth noting that the claims by Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996), pp. 319-20, that few Westerners would reject Singaporean values as unworthy and that an "exploration and expansion" of common values is essential for peace in a multicivilizational world may require a re-examination of the security issue.
6. The concept of "Third World" may have outlived its usefulness. Not only is it problematic in presupposing the division of countries into two other semi-autonomous groupings (i.e., "First World" and "Second World"), but the application of ordinal numbers to these different "worlds" reinforces existing value hierarchies. We use the term 'Third World' with the full awareness of these problems. On this matter, see Vittorio Hösle, "The Third World as a Philosophical Problem," *Social Research* 59 (Summer 1992): 227-62. Interesting treatments of the origin, definition, and usage of the term 'Third World' are contained in Leslie Wolf-Phillips, "Why 'Third World'? Origin, Definition and Usage," *Third World Quarterly* 9 (October 1987): 1311-27 and Ali Mirsepassi and Mehrzad Boroujerdi, "Rethinking the 'Third World'," *International Third World Studies Journal and Review* 5 (1993): 51-58.
7. Alison T. Slack, "Female Circumcision: A Critical Appraisal," *Human Rights Quarterly* 10 (November 1988): 437-86.
8. For discussions of the sexual experiences of mutilated girls and women, see Efua Dorkenoo, *Cutting the Rose—Female Genital Mutilation: The Practice and Its Prevention* (London: Minority Rights Publications, 1994), pp. 20-21; Hanny Lightfoot Klein, *Prisoners of Rituals. An Odyssey into Female Genital Mutilation in Africa* (New York: Haworth Press, 1989); Ahmed Abuel-Futuh Shandall, "Circumcision and Infibulation of Females," *Sudanese Medical Journal* 5 (1967); and Nabid Toubia, *Female Genital Mutilation, A Call for Global Action* (New York: Women Ink, 1993).
9. See Slack, "Female Circumcision," pp. 450-54 and Nawal El-Saadawi, *The Hidden Face of Eve: Women in the Arab World* (London: Zed Press, 1980): p. 34. See also Ragiya H.D. Abdalla, *Sisters in Affliction: Circumcision and Infibulation of Women in Africa* (London: Zed Press, 1982) and Asma El Dareer, *Women, Why Do You Weep? Circumcision and Its Consequences* (London: Zed Press, 1980).
10. Ibid.
11. See Morton E. Winston, *The Philosophy of Human Rights* (Belmont, Calif.: Wadsworth, 1989), pp. 258-59.
12. The text of the Convention on the Elimination of All Forms of Discrimination Against Women can be found in Hilikka Pietilä and Jeanne Vickers, *Making Women Matter: The Role of the United Nations* (London: Zed Books, 1994), pp. 173-80.
13. Quoted in Pietile and Vickers, *Making Women Matter*, pp. 129-30.
14. Ibid., pp. 143-44.
15. On the male-female distinction, see, for example, Dorkenoo, *Cutting the Rose—Female Genital Mutilation*, where it is noted that the mildest form of mutilation can "correctly be called circumcision and could be described as equivalent to male circumcision, but there has been a tendency to group all kinds of mutilations under the misleading term 'female circumcision'" (p. 5).

16. Michael D. Bayles, "Selective and Conditional Population Aid: Some Moral Issues," in *Ethical Issues of Population Aid: Culture, Economics and International Assistance*, ed. Daniel Callahan and Phillip G. Clark (New York: Irvington, 1981), p. 293.
17. See Sônia Correa and Rosalind Petchesky, "Reproductive and Sexual Rights: A Feminist Perspective," in *Population Policies Reconsidered: Health, Empowerment, and Rights*, ed. Gita Sen, Adrienne Germain, and Lincoln C. Chen (Boston: Harvard Center for Population and Development Studies, 1994), pp. 107-23.
18. Winston, *The Philosophy of Human Rights*, p. 260.
19. See Qu Geping and Li Jinchang, *Population and the Environment in China*, trans. Jiang Baozhong and Gu Ran (Boulder, Co.: Lynne Rienner, 1994), p. 175 and *World Resources 1996-97* (Oxford: Oxford University Press, 1996), pp. 174-75. See also Dorothy Stein, *People Who Count: Population and Politics, Women and Children* (London: Earthscan, 1995).
20. Reed Boland, Sudhakar Rao, and George Zeidenstein, "Honoring Human Rights in Population Policies: From Declaration to Action," in *Population Policies Reconsidered*, ed. Sen, Germain, and Chen, pp. 89-105. The range of arguments on the issue of the compulsiveness of China's one-child policy can be seen in John Aird, *Slaughter of the Innocents: Coercive Birth Control in China* (Washington, D.C.: American Enterprise Institute, 1990); Susan Greenhalgh, Zhu Chuzhu, and Li Nan, "Restraining Population Growth in Three Chinese Villages, 1988-93" *Population and Development Review* 20 (June 1994): 365-96; and Vaclav Smil, *The Bad Earth: Environmental Degradation in China* (London: Zed Press, 1984).
21. *United Nations Press Release*, POP/626/Rev.1, 14 November 1996.
22. Joel E. Cohen, *How Many People Can the Earth Support?* (New York: W.W. Norton, 1996).
23. See Matthew Connelly and Paul Kennedy, "Must It Be the Rest Against the West?" *Atlantic Monthly* (December 1994): 61-63, 66, 68-70, 72, 76, 79, 82, 84-85, 88, 91; Thomas F. Homer-Dixon, "On the Threshold: Environmental Changes as Causes of Acute Conflict," *International Security* 16 (Fall 1991): 76-116; Robert D. Kaplan, "The Coming Anarchy," *Atlantic Monthly* (February 1996): 44-46, 48-49, 52, 54, 58-60, 62-63, 66, 68-70, 72-76 and *The Ends of the Earth: A Journey at the Dawn of the 21st Century* (New York: Random House, 1996); Jessica Tuchman Mathews, "Redefining Security," *Foreign Affairs* 68 (Spring 1989): 162-77; and Norman Myers, "Environment and Security," *Foreign Policy*, no. 74 (Spring 1989): 23-41.
24. See Geping and Jinchang, *Population and the Environment in China*. Although the long-term effects of a growing Third World population on the global environment can be expected to be large, Amartya Sen is quick to point out that "the short-run picture tends to be dominated by the fact that the per-capita consumption of food, fuel, and other goods by people in third world countries is often relatively low; consequently the impact of population growth in these countries is not, in relative terms, so damaging to the global environment" (Amartya Sen, "Population: Delusion and Reality," *The New York Review of Books*, 22 September 1994, p. 68).
25. *Ibid.*, p. 35.
26. Not all would agree, however. The Chinese government has insisted that the international community is not competent to assess the human rights situation in China. According to H.E. Liu Huaqiu, head of the Chinese delegation at the Second UN World Conference on Human Rights, Vienna, 15 June 1993: "To wantonly accuse another country of abuse of human rights and impose the human rights criteria of one's own country or region on other countries or regions are tantamount to an infringement upon the sovereignty of other countries and interference in the latter's internal affairs, which could result in political instability and social unrest in other countries" [Quoted by Monique C. Castermans-Holleman, "State Sovereignty and the International Protection of Human Rights," in Moorhead Wright, ed., *Morality and International Relations: Concepts and Issues* (Aldershot, England: Avebury, 1996), pp. 113-14].
27. The classic definition is expressed by Wil Verwey, "Legality of Humanitarian Intervention After the Cold War," in *The Challenge to Intervene: A New Role for the United Nations?* ed. E. Ferris (Uppsala, Sweden: Life and Peace Institute, 1992), pp. 113-22. Commentators who have presented new variants of this definition include I. Brownlie, "Humanitarian Intervention," in *Law and Civil War in the Modern World*, ed. J. Moore (Baltimore: John Hopkins University Press, 1974), pp. 217-52; J. Donnelly, "Human Rights, Humanitarian Intervention and American Foreign Policy: Law, Morality and Politics," *Journal of International Affairs* 37 (Winter 1984): 311-28; John Harriss, ed., *The Politics of Humanitarian Intervention* (London: Pinter, 1995); and Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Cambridge, England: Polity Press, 1996).
28. Perhaps we should agree with Jefferson McMahan who, in "The Ethics of International Intervention," in Kenneth Kipnis and Diana T. Meyers, eds., *Political Realism and International Morality* (Boulder, Co.: Westview Press, 1987), p. 78, makes explicit the coercive nature of intervention when he defines intervention as "coercive external interference in the affairs of a population organized in the form of a state."
29. For a discussion of the issues concerning covert operations, including the distinction between coercion and manipulation, see Charles R. Beitz, "Covert Intervention as a Moral Problem," in Joel H. Rosenthal, ed., *Ethics and International Affairs: A Reader* (Washing-



- ton, D.C.: Georgetown University Press, 1995) and Gregory F. Treverton, *Covert Action* (New York: Basic Books, 1987).
30. It should be noted, however, that national sovereignty has never been thought of as absolute. In fact, the notion has been significantly eroded since the First World War. For a discussion of the notion of sovereignty see Castermans-Holleman, "State Sovereignty," pp. 113–30 and Eli Lauterpacht, "Sovereignty—Myth or Reality?" *International Affairs* 73 (January 1997): 137–50.
  31. Duane L. Cady, "Pacifist Perspectives on Humanitarian Intervention," in *Humanitarian Intervention: Just War vs. Pacifism*, Robert L. Phillips and Duane L. Cady (Lanham, Md.: Rowman & Littlefield, 1996), pp. 31–75. See also James Turner Johnson, *Can Modern Wars Be Just?* (New Haven: Yale University Press, 1984); Gregory S. Kavka, "Was the Gulf War a Just War?" *Journal of Social Philosophy* 22 (Spring 1991): 20–29; David Luban, "Just War and Human Rights," *Philosophy and Public Affairs* 9 (Winter 1980): 160–81; William V. O'Brien, *The Conduct of Just and Limited War* (Westport, Conn.: Greenwood, 1981); and Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977) and "The Politics of Rescue," *Dissent* (Winter 1995): 35–41.
  32. UN doc. E/CN.4/Sub.2/1993/8, 2 July 1988, p. 7. A much broader definition can be found in Medina Quiroga, *The Battle of Human Rights: Gross, Systematic Violations and the Inter-American System* (Dordrecht: Martinus Nijhoff, 1988): gross human rights violations are "instrumental to the achievement of governmental policies, perpetrated in such a quantity and in such a manner as to create a situation in which the right to life, to personal integrity or to personal liberty of the population as a whole or of one or more sectors of the population of the country are continuously infringed or threatened" (p. 16). See also Hilde Hey, *Gross Human Rights Violations: A Search for Causes: A Study of Guatemala and Costa Rica* (The Hague: Martinus Nijhoff, 1995).
  33. See Peter J. Donaldson, *Nature Against Us: The United States and the World Population Crisis, 1965–1980* (Chapel Hill: University of North Carolina Press, 1990) and Stein, *People Who Count: Population and Politics, Women and Children*.
  34. Although there was a record amount budgeted for family planning programs in 1995, the funding for those programs was slashed by 35% in 1996 and the Clinton administration is struggling to get Congress to approve \$385 million for these same programs in 1997.